

STATE OF MICHIGAN  
COURT OF APPEALS

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SANDRA LAHTINEN,

Plaintiff-Appellee,

v

MICHIGAN EDUCATION SUPPORT  
PERSONNEL – WUPEAN/MEA-NEA,

Defendant-Appellant.

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UNPUBLISHED

June 19, 2007

No. 266907

Gogebic Circuit Court

LC No. 04-000080-CK

Before: Schuette, P.J., and O’Connell and Davis, JJ.

O’CONNELL, J. (*dissenting*).

I respectfully dissent. In my opinion, the trial court erred when it failed to grant summary disposition for defendant. I would reverse the decision of the trial court.

“A union has considerable discretion to decide which grievances shall be pressed to arbitration and which shall be settled, and must be permitted to assess each grievance with a view to individual merit.” *Knoke v East Jordan Pub School Dist*, 201 Mich App 480, 486; 506 NW2d 878 (1993). In the present case, the union concluded that, pursuant to the terms and conditions of the collective bargaining agreement (CBA), plaintiff, a part-time employee, could not bump into a full-time vacancy. The union’s position is supported by both the CBA and past practice of the parties.

As the majority opinion recognizes, “There was ample testimony regarding the past practice of part-time employees being *unable* to bump full-time employees.” *Ante* at slip op p 6 (emphasis added.) In addition to this testimony, Article 12, Section B of the CBA only gives bumping rights to “equivalent” positions. In my opinion, a part-time position is not equivalent to a full-time position, so plaintiff was not able to bump into a full-time position. Without any contractual justification for expending the resources required to pursue plaintiff’s cause in arbitration, and given defendant’s discretion to determine the merits of plaintiff’s cause, nothing in this record indicates that defendant failed to fulfill its duty of fair representation. Plaintiff’s position that the defendant has a duty to arbitrate all grievances without regard to past practice, the CBA, or the unintended consequences of arbitration, is simply without merit.

I would reverse the decision of the trial court.

/s/ Peter D. O’Connell